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Chapter 6

Neither Insurgency Nor Paramilitarism. Notes on Los Zetas and the Violence in Mexico

Jesús Pérez Caballero*

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1. Introduction

Los Zetas (LZ) have illustrated some of the challenges for the Mexican Federation (in the local, state and federal levels) in its fight against powerful groups linked to drug trafficking. Their *modus operandi* has led to a change in patterns of Mexican drug trafficking organizations (DTO), and analyzing that allows us to understand the nature of violence in that country. However, some approaches label

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LZ as either an insurgent or a paramilitary group. To explain some of the problems of these positions, I study the evolution of LZ from a classical perspective, namely, with the tools that the strict concepts of both insurgency and paramilitary provide. Established that, I outline the legal, conceptual and political contradictions of expanding the concepts of insurgency or paramilitary to a DTO as LZ.

2. Concepts of insurgency and paramilitary

2.1. Concept of insurgency

For a first approach to the concept of insurgency, it can be observed what states International Law. Both International Humanitarian Law (IHL) and International Criminal Law (ICL) offer a guidance on how to characterize some of the non-state actors engaged in violence. Thus, Article 1.1 of the Protocol Additional II to the Geneva Conventions of 1949 (PAII) considers that it can be applied to conflicts:

[W]hich take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol¹.

This definition does not mention explicitly the word “insurgency”, but it gives some useful tools to reflect on that concept. For example, it provides an internationally customary basis to prevent from an *ad infinitum* modification of the term. Furthermore, from the perspective of building a legal case, if an insurgency meets the above features, it will be easier for a legal operator to prove the contextual elements of international crimes. For instance, a non-international armed conflict

1. PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS (Protocol II), 8 June 1977.

for war crimes, or the the suitability of a non-state organization to promote crimes against humanity, for being militar like².

International jurisprudence has completed this approach with the terms “organization of the parties” and “intensity of hostilities”³. However, new technologies, mainly in weapons and telecommunications fields, make easy to non-state actors to spread violence, even if the organization is decentralized. So, the hierarchy of a group and its capacity (a quantitative feature) of provoking damage, could not be as indicative as they were decades ago.

Political Science can help to fill the gap left by the previous legal questions. Thus, JORDAN, according to some texts of military doctrine, has conceptualized an insurgency as:

“An actor or set of actors, who face the established political authority in an organized and prolonged in time manner [...] through effective social mobilization strategy and a substantive use of force”⁴.

2. I find some contradictions in the position of, for example, IOSA, J. “Sobre el dominio territorial como requisito del elemento político en la definición de los crímenes contra la humanidad. Un análisis enfocado en la calificación jurídica de los actos de la izquierda armada en Argentina”, *Revista Crítica Penal y Poder*, nº 6, March 2014, pp. 174-175. Retrieved from <http://revistes.ub.edu/index.php/CriticaPenalPoder/article/view/7431/13030>. The Argentinian jurist justifies his reasoning with the term “moral sensitivity” (“sensibilidad moral”). Similar positions are criticized in PÉREZ, J., “El elemento político en los crímenes contra la humanidad. La expansión de la figura al crimen organizado transnacional y el caso de las organizaciones de narcotraficantes mexicanas en el sexenio 2006-2012”, Madrid: Dykinson, 2015b, pp. 65-89. On the possibility of a context of international crimes in Mexico, see an introduction in THE SAME AUTHOR, “Will the International Criminal Court Investigate Mexico’s ‘Drug War?’”, *InSight Crime*, November 5, 2014c. Retrieved from <http://www.insightcrime.org/news-analysis/international-criminal-court-mexico-drug-war>.
3. A pioneer example in ICTY, *Prosecutor v. Tadic*, Opinion and Judgment, IT-94-1-T, May 7, 1997, paragraphs. 562 and foll. A proper analysis on that topic applied to the Mexican situation, but with different conclusions to mine, in: MONTOYA, I., “Criminalidad organizada y conflicto armado no internacional”, in: N. T. Bravo and J. G. García (coords.), *Balance e impacto de las políticas públicas federales en materia de seguridad bajo la gestión de Felipe Calderón Hinojosa (2006-2012)*, Guadalajara: Universidad de Guadalajara. Centro Universitario de Ciencias Económico Administrativas, 2014, pp. 138-145.
4. “[U]n actor, o un conjunto de actores, que se enfrentan de manera organizada y prolongada en el tiempo a la autoridad política establecida [...], mediante una estrategia efectiva de movilización social y con un empleo sustutivo de la fuerza”. JORDÁN, J., “Delimitación teórica de la insurgencia: conceptos, fines y medios”, in: J. Jordán, P. Pozo and J. Baqués (eds.), *La seguridad más allá del Estado. Actores no estatales y seguridad*

Given the intensity linked to that definition, predominantly qualitative according to aspects such structure of the group, its penetration in institutions or its capability of interaction with social movements, rather than quantitative (like number of deaths the organized group can achieve, or its firepower), it is difficult to conceive an insurgency (*in nuce* or *de facto*) not tied to an armed conflict. Nevertheless, what seems feasible is an insurgency without an internal hierarchical organization. For instance, organized in cell networks, such as the Zapatista Army of National Liberation (Ejército Zapatista de Liberación Nacional, EZLN)⁵. Other examples show as well that possibility. A preliminary report of activities of the Office of the Prosecutor of the International Criminal Court (OTP) extends to Nigerian Boko Haram the capability of being part in a non-international armed conflict⁶. And that although Boko Haram is closer to a *terrorist insurgency* than to a *guerrilla insurgency*, and it has different characteristics from a classic group by PAII. Thus, the OTP obviates key questions that Boko Haram should face if it is a party in an armed conflict, like its loose internal organization⁷ and its transnational aspect⁸. Just the transnational networks explain new insurgencies,

internacional, Madrid: Plaza y Valdés, 2011, p. 114. The translations from the Spanish texts are always mine.

5. RONFELDT, D. and ARQUILLA, J., “Aparición e influencia de la lucha social zapatista en red”, in: J. Arquilla, and D. Ronfeldt, *Redes y guerras en red. El futuro del terrorismo, el crimen organizado y el activismo político*, Alianza Editorial, Madrid, 2003, p. 218.
6. OFFICE OF THE PROSECUTOR, Report on Preliminary Examination Activities 2013, November 2013. Retrieved from http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/OTP%20Preliminary%20Examinations/OTP%20-%20Report%20-%20Preliminary%20Examination%20Activities%202013.PDF
7. “This theory holds that while a small number of nihilist, Islamist elements certainly exist in the north, Boko Haram has become little more than a brand name, a murky confluence that now also includes criminal opportunists as well as disgruntled political bosses and their henchmen. ‘Boko Haram has become a franchise that anyone can buy into. It’s something like a Bermuda Triangle,’ said Borno State Governor Kashim Shettima”. BAVIER, J., “Nigeria: Boko Haram 101”, *Pulitzer Center on Crisis Reporting*, January 17, 2012. Retrieved from <http://pulitzercenter.org/reporting/nigeria-boko-haram-terrorist-group-islam-christian-church-targets-youth-military>. See for an in depth study: PÉROUSE DE MONTCLOS, M. A., *Nigeria’s Interminable Insurgency? Addressing the Boko Haram Crisis*, Research Paper, Chatham House, September 2014, pp. 7-10. Retrieved from http://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140901BokoHaramPerousedeMontclos_0.pdf.
8. “They [Al Shabaab and Boko Haram] have moved beyond the demons of Africa’s ethnic and clan politics, and are transnational - both seek in different ways to form caliphates

like the Islamic State (IS). IS is a party in an armed conflict that existed previous to them, in Syria; it has launched another armed conflict in Iraq; and it is able to use terrorist franchises to gain local villages and non-controlled extensive regions, as it has done, e.g., in Libya⁹. Hence, IS is the umpteenth variant of an *open source warfare*¹⁰, combined with high impact propaganda¹¹.

In any case, *intensity* is a term made of political, militar and social skills, and I consider it proper to understand intermediate situations of insurgency, like “protoinsurgency”. This concept could describe contexts of violence, terrorist attacks, sabotage, etc., not as sporadic acts in which it is difficult to establish a disputing party¹², but as actions related to a course of conduct (i.e., the project to become an insurgency)¹³. The protoinsurgency would be to insurgency, what an attempted terrorist attack is to terrorism. To cite a relevant case in Mexico, the Popular Revolutionary Army (Ejército Popular Revolucionario, EPR) is a protoinsurgency and its tools are a mix of political social activism, sabotage and terrorism. According to BYMAN, a protoinsurgency meets the requirements of: Creation, or possession, of an identity; attachment to a political cause with general acceptance;

that don't recognise current borders”. ONYANGO-OBBO, Ch., “Al Shabaab and Boko Haram's madness could save Africa in the end-but the price will be very high”, *Mail & Guardian Africa*, August 27, 2014. Retrieved from <http://mgafrica.com/article/2014-08-26-al-shabaab-and-boko-harams-madness-could-save-africa-in-the-end-but-the-price-will-be-very-high>.

9. AL-TAMIMI, A. J., *The Islamic State's regional strategy*, European Council of Foreign Relations, October 2, 2014, Retrieved from http://www.cfr.org/article/commentary_the_islamic_statesRegional_strategy326
10. An approach in ROBB, J., (September 24, 2004), “The Bazaar's Open Source Platform”, *Global Guerrillas*. Retrieved from http://globalguerrillas.typepad.com/globalguerrillas/2004/09/bazaar_dynamics.html. For other context for the term, PÉREZ, J., “El caso Breivik como paradigma de la nueva violencia política en Europa”, *UNISCI Discussion Papers*, número 34, 2014a, p. 147, included footnote 40. 139-151. Retrieved from <http://pendientedemigracion.ucm.es/info/unisci/revistas/UNISCIDP34-8PEREZ.pdf>
11. TOLBA, A. and BAYOUMY, Y., “Egypt bombs Islamic State targets in Libya after 21 Egyptians beheaded”, *Reuters*, February 16, 2015, Retrieved from <http://www.reuters.com/article/2015/02/16/us-mideast-crisis-libya-egypt-idUSKBN0LJ10D20150216>
12. MANGAS, A., *Conflictos armados internos y derecho internacional humanitario*. Salamanca: Ediciones Universidad de Salamanca, 1999, p. 70.
13. The term “course of conduct” can be seen, for the contexts of crimes against humanity, in Article 7.2 a) of the ROME STATUTE FOR THE INTERNATIONAL CRIMINAL COURT, July 7, 1998. I use it in this paper just for explicative purposes.

management of relations with rival groups to co-opt or imposed on them; lodge a territorial base; and, where applicable, external support¹⁴. Therefore, these goals are linked to a number of means to achieve them, including armed struggle, propaganda, social assistance, social and political activism, and external relations¹⁵. Perhaps in those aspects lies the difference between protoinsurgency and terrorism: Protoinsurgency has the goal of growing, terrorism has the goal of keeping its strength.

Finally, in a *conceptual line*, ideally continuous, of protoinsurgency and insurgency, historical experience indicates that it can be added another step: postinsurgency. For instance, an insurgent organization may have increasingly reduced its maneuverability, but still be able to launch attacks (e.g., Peruvian Shining Path, Sendero Luminoso)¹⁶.

Besides the triad protoinsurgency-insurgency-postinsurgency, the doctrine has stressed that terrorist and criminal organizations can modify its objectives. And so do insurgent organizations. Using the hybridization and transformation approach¹⁷, a hybrid insurgency describes an organization fragmented in nature, in which coexist politics and organized crime, without a clear distinction between the two fields. Meanwhile, a transformed insurgency indicates that an insurgent organization has changed its nature and have become, for example, criminal. In turn, the reverse phenomenon could also be observed, when a hybrid criminal organization incorporates substantially typical political features of an insurgency, or even changes completely to become insurgent. I.e., if the most part of its funds go to promote a social or political campaign; or, from the DTO perspec-

14. BYMAN, D., *Understanding Proto-Insurgencies*, RAND counterinsurgency study: paper 3, 2007, pp. 5, 11-20 and 51-56. Retrieved from http://www.rand.org/content/dam/rand/pubs/occasional_papers/2007/RAND_OP178.pdf. In this sense, JORDÁN, op. cit., pp. 115-120.
15. JORDÁN, op. cit., pp. 126-132.
16. As shown in VALLE, E. and GORRITI, G., “Métricas de guerra”, IDL-Reporteros, January 20, 2015, Retrieved from <https://idl-reporteros.pe/metricas-de-guerra/>
17. DE LA CORTE, L. and GIMÉNEZ-SALINAS, A., *Crimen.org. Evolución y claves de la delincuencia organizada*. Barcelona: Ariel, 2010, p. 328. These authors analyze hybridization and transformation related to terrorist and criminal organizations, not to insurgencies.

tive, its narrative has nothing to do with drugs, corruptions or routes, and it becomes-for a considerable period of time, or even definitely-a militar discourse.

2.2. Concept of paramilitary

“Paramilitary” is the second concept whose characterization gives conceptual tools to analyze the nature of violence in Mexico and the role of LZ. KALYVAS and ARJONA, in a classic definition, characterize paramilitary organizations such as:

“Armed groups that are directly or indirectly with the State and its local agents, created by the State or tolerated by it, but outside its formal structure”¹⁸.

On the one hand, as it has been explained, insurgency differs from other violent manifestations by an *holistic opposition* to the state, i.e., political or social opposition. On the other hand, paramilitarism supports state institutions (meaning that they converge in goals), through violent flexible means and with a relative autonomy. Therefore, it should be noted that paramilitaries share with the state an usually aim, eliminating “those who are perceived as threatening the socioeconomic basis of the political hierarchy”¹⁹. That feature emphasizes the relationship between state building and paramilitarism. Paramilitarism appears together to the privatization and outsourcing of the monopoly of violence²⁰. The value provided by paramilitary is being “employer[s] of coercion”, as ROMERO explains:

A category of men for whom bearing arms and exercising violence or [...] threatening with that exercise [...] is the value in use of the skills they possessed [...]

18. “[G]rupos armados que están directa o indirectamente con el Estado y sus agentes locales, conformados por el Estado o tolerados por éste, pero que se encuentran por fuera de su estructura formal”. KALYVAS, S. and ARJONA, A., “Paramilitarismo: Una perspectiva teórica”, in: A. Rangel (ed.), *El poder paramilitar*, Bogotá: Fundación Seguridad y Democracia-Planeta, 2005, p. 29. Original text in cursive.

19. MAZZEI, J., *Death squads or self-defense forces: how paramilitary groups emerge and challenge democracy in Latin America*, Chapel Hill: The University of North Carolina Press, 2009, pp. 4-5.

20. As KALYVAS y ARJONA, op. cit., pp. 34, 35 and 37, included footnote 6.

[...] business men [...] which provide a product [...] and can act as agents for others or under their own²¹.

Although paramilitary organizations often have fluid supports from both legality and illegality, its mainstay are legal agents operating in illegality²², usually after being isolated from the state organization chart, and taking advantage of that operational ambiguity²³. United Self-Defense Forces of Colombia (Autodefensas Unidas de Colombia, AUC) are an example. AUC benefited from the state tolerance to consolidate its structures, to the point of becoming a state like organization. An example of that is given by a recent judgment, among many. It states that an agribusiness project, that wanted to turn a Colombian region the largest being cultivated with oil palm area, was in fact part linked to Colombian paramilitary²⁴.

MAZZEI has schematized the way paramilitary organizations act, designing a typical frame structure. It is constructed from establishing channels of legitimacy and resources, with flexible mechanisms to collaborate with representative of political parties, economic powers and military or police forces²⁵. The MAZZEI’s scheme can be applied to several levels, completing the classification raised by KALYVAS and ARJONA for paramilitary organizations, which is based on their size and territory covering: vigilantes (small size/local level), death squads (small/supralocal), local guards (large/local) and, finally, militias and paramilitary armies (large/supra)²⁶.

21. “[U]na categoría de hombres para quienes empuñar las armas y ejercer la violencia o [...] [su] amenaza [...] es el valor de uso de la destreza que poseen [...] [,] empresarios [...] que proveen de un producto [...] y pueden actuar como agentes de otros o a título propio”. ROMERO, M., *Paramilitares y autodefensas 1982-2003*, Bogotá: Instituto de Estudios Políticos y Relaciones Internacionales, IEPRI-Editorial Planeta Colombiana, 2003, p. 57.

22. METZ, S., *Rethinking insurgency*, Strategic Studies Institute, Washington, June 2007, p. 25. Retrieved from <http://www.strategiestudiesinstitute.army.mil/pdf/790.pdf>. However, METZ called them “militias”.

23. A “confusing departmental affiliation”, according to the view of POLITKOVSKAYA, A., *Terror en Chechenia*, Barcelona: Ediciones del Bronce, 2003, p. 16.

24. JUZGADO QUINTO PENAL DEL CIRCUITO ESPECIALIZADO DE MEDELLÍN, Radicado: 05001 31 07 005 2011 01799, Procesado: Gabriel Jaime Sierra Moreno y otros, Sentencia N° 054, October 30, 2014.

25. MAZZEI op. cit., p. 36.

26. KALYVAS and ARJONA, op. cit., p. 31.

However, I find that some ideological goals typical of paramilitary organizations should be added to this classification, such the relationship between paramilitary, counterinsurgency and social control. With that skill as an inherent feature of paramilitary, it can be distinguished paramilitary violence from other forms of social control, like indigenous vigilantes with communal institutions, or death squads promoted by private organizations.

Finally, it remains to be said that, sometimes, the link between a paramilitary organization and the sponsor state can get blurred. This may be by a decision of the state, whose patronage moves away from a general support to the paramilitary organization, to isolated supports provided by individuals. On the contrary, a paramilitary organization can turn into a powerful group, so complex that achieves a capacity that allows it to reduce, or even get rid of, the state control. For instance, the AUC got by themselves being a party in the Colombian armed conflict. In such cases, although paramilitaries are a war party, they can not be labelled as insurgent groups²⁷.

2.3. Proposed analytical framework

The analytical framework resulting is conceptually strict and easy to test for legal purposes. Thus, an insurgency is linked to an opposition to the state with an alternative political project, which is inseparable from a social base; it has some kind of permanent identity (neither temporary nor opportunistic); a need to refer to an audience that legitimizes a territorial control, or the intention of gaining it; and the ability to achieve some consistency, to receive the support from national or international allies. Complementary concepts such protoinsurgency and postinsurgency catch intermediate stages in insurgency without changing wrongly the nature of the organization. So do the terms hybridization and transformation.

27. Unless it is admitted the paradox of a *vigilante insurgency* (necessarily a *deadlock oxymoron*). Among others, REINARES explains that "vigilante terrorism" ("terrorismo vigilante") has the "intention of maintaining the established political order", in opposition to "insurgent terrorism". REINARES, F., *Terrorismo y antiterrorismo*, Barcelona: Paidós, 1998, p. 19.

Paramilitary has been defined by the relationship with the state, regardless of institutional affiliation. A paramilitary organization has a close relationship with political, economic and military police powers, and can adopt many forms, such as those mentioned above: vigilantes, death squads, local guards, and militia or paramilitary armies.

With this analytical framework, the question of whether LZ are an insurgent or paramilitary organization achieves a more accurate discussion.

3. Characteristics of LZ: *Soldiers without war*

As it is known, LZ appear from a group of former Mexican military, including some members of Special Forces Airmobile Group (Grupo Aeromóvil de Fuerzas Especiales, GAFE), a Mexican elite unit created in the nineties²⁸. It is usual that some individuals of Mexican security forces have ties with DTO, and indeed the management of these connections was a common place in the Institutional Revolutionary Party (Partido Revolucionario Institucional, PRI) regime of the last century. However, the novelty of LZ was the introduction of a "military outlook"²⁹ in DTO. That outlook has had qualitative consequences for its internal organization; the relationship with its allies; and the way they have fight their rivals. E.g., it has made easy the incorporation of individuals with a similar profile, as Guatemalan kaibiles³⁰.

28. VALDÉS, G., *Historia del narcotráfico en México*, Aguilar: México D.F, 2013, pp. 255-256; and US FEDERAL BUREAU OF INVESTIGATION, "Los Zetas: ITAR – Violent Gangs", memorandum, classification unknown, April 22, 2005a, 2 pp. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB499/DOCUMENT01-20050422.PDF>, p.1.

29. DUDLEY, S., "The Zetas in Guatemala", *InSight Crime*, September 8, 2011, p. 2. Retrieved from http://www.insightcrime.org/media/k2/attachments/insight_crime_the_zetas_in_guatemala.pdf

30. US DRUG ENFORCEMENT ADMINISTRATION, "Assessment of 'Los Zetas' Evolution and Expansion (2001-2009)", Cable, Sensitive, July 2009. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB445/docs/20090700ca.PDF> ; THE SAME AUTHOR, Houston Field Division, "Los Zetas Factsheet", Report, Classification Unknown, February 2010a. Retrieved from:

LZ began working for Osiel Cárdenas Guillén, leader of the Gulf cartel (GC) between 1999 and 2000. Their services consisted not only in typical tasks of hitmen, but in exploiting their know-how related to security in a broad sense: Providing protection to leaders and goods; routes assurance; or intelligence operations, among others³¹. The margin of operational autonomy that these tasks provide could have been one of the keys of their subsequent GC separation. Linked to a subject, Cárdenas (namely, personal ties instead of organizational ones), a crisis came when the GC leader was sent to prison in 2003³². His extradition to the USA in 2007 worsened the situation and that could be the trigger for the break between LZ and his employer, accomplished around 2010.

LZ were born as an atypical group in a traditional landscape of DTO with extended families linked to a region. While there have been other DTO which have also broken into the XXIst century, as The Michoacan Family (La Familia Michoacana, LFM), The Knights Templar (Los Caballeros Templarios, LCT), or the Jalisco Cartel New Generation (Cártel Jalisco Nueva Generación, CJNG), all of them have originated in groups of power rooted in the place where they were born (e.g., LFM and LCT in Michoacan, and CJNG in Jalisco). But LZ had not roots to a territory, at least not until they met Cárdenas. In that sense, they were the beginning of modernity to DTO: *no roots, no traditional rules*.

Besides that, LZ reached an identity for what they did (i.e., its capability of using violence in a success way), not because they belong to a particular family. To cite some examples, the Arellano Felix in Baja California, Carrillo Fuentes in Chihuahua, or the Beltran Leyva in Si-

<http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB445/docs/20100200.PDF>; and THE SAME AUTHOR, *FW: SEARS NBR 6152 for North & Central America case [redacted]*, Cable, Classification Unknown, May 28, 2010b, p. 3. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB499/DOCUMENT19-20100528.PDF>

31. US FEDERAL BUREAU OF INVESTIGATION, *Los Zetas: An Emerging Threat to the United States*, Intelligence Assessment, Unclassified/For Official Use Only, July 15, 2005b, p. 1. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB499/DOCUMENT102-20050715.pdf>

32. RESA, C., *Los Zetas: De narcos a mafiosos, El comercio de drogas ilegales en México*, Nota de Investigación 4/2003, Universidad Autónoma de Madrid, pp. 2-3. Retrieved from https://www.uam.es/personal_pdi/economicas/cresa/nota0403.pdf.

naloa, were linked to their places of origin not only criminally, but as well socially, probably after a process of decades. By contrast, LZ used their new relationship with Cárdenas brothers to root in Tamaulipas.

According to VALDÉS, a *zeta model* was originated in the way LZ related to its sphere of action. For the former director of the Center for Investigation and National Security (Centro de Investigación y Seguridad Nacional, CISEN), Cárdenas needed a group such LZ for the exploitation of the land routes under the influence of GC. The strip of land from the northern state of Tamaulipas to Guatemala required a greater logistical deployment to ensure routes and caravans³³. And LZ, after breaking with the GC, and having the ability to act elsewhere, applied that model to different contexts. That is, what in an environment was a “military outlook” understood as a logistic defensive manner, in other contexts was an aggressive conduct, and a disruption in the DTO classical way of acting. Hence the perception of LZ as *soldiers without war*. This could have allowed them too to overcome the major handicap to enter in the Mexican drug market, their lack of contacts for themselves³⁴. Subsequently it was obtained by exploiting its position of strength. Besides that, LZ have combined drug trafficking with other crimes, and an example of their diversification is the smuggling of hydrocarbons, an offense that illustrates perfectly the DTO’s complexity and resilience³⁵.

After breaking with Cárdenas and GC, LZ has been participated in high-profile incidents where they have shown their military capability. They have been involved in both sporadic³⁶ and numerous³⁷

33. VALDÉS, op. cit., pp. 251-252 and 260-261.

34. RESA 2003, pp. 3-5.

35. As it is highlighted by SALCEDO-ALBARÁN, E. and GARAY, L. J., *Structure of a Transnational Criminal Network: 'Los Zetas' and the Smuggling of Hydrocarbons*, Vortex Working Paper Nº 12, Bogotá, 2014, p. 38. Retrieved from <http://www.scivortex.org/12TCNsMexUsV2.pdf>. Sometimes I have the impression that the aforementioned authors mix a strong theoretical framework with a weak use of sources. But the task of them for the analysis of organized crime is essential to overcome loose analogies with other phenomena.

36. US CONSULATE MATAHOROS, *February 14: A Day of Violence in Tamaulipas*, February 15, 2011, Cable, Sensitive, pp. 1-2. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB499/DOCUMENT29-20110215.pdf>

37. OSORNO, D.E., “La batalla de Ciudad Mier (Parte 1)”, *Gatopardo*, April 2011, pp. 2-3. Retrieved from <http://www.gatopardo.com/ReportajesGP.php?R=75&pagina=1>.

ongoing fightings, especially with the GC. And LZ have attacked prisons, probably to use prisoners as forced recruits³⁸. But mainly, official and mediatic spotlight was put on them for participating in mass murders. One of the most ominous happened on August 2010, when members of the Mexican Navy found the bodies of 72 migrants in San Fernando (Tamaulipas). The motives for the killings are unknown, although some documents speak about LZ trying to recruit the migrants, or about an attack to harm the GC³⁹. That crime was not the only one. As well in San Fernando, on April 2011, the Mexican Army discovered 36 graves, in which there were 196 bodies⁴⁰. In these cases, also as conjecture, LZ could have thought that the individuals were collaborators of the GC. This massiveness, so characteristic of terrorist attacks, it is completed with lesser-known cases, such as the slaughter of Allende (Coahuila), held in March 2011. There, according to some sources, a *zeta* commando kidnapped and killed around 300 people and demolished many buildings. The reason could have been to punish families, friends and workers of two former allies of LZ that become protected witnesses⁴¹.

After 2006-2012, LZ was split in two leaderships (as a minimum), repeating a similar pattern to other DTO. In fact, that volatility also affected the GC, immersed in several clashes⁴². Both LZ leaders were arrested: Heriberto Lazcano, a.k.a “El Lazca”, on October 2012, and Miguel Ángel Treviño Morales, a.k.a “Z-40”, on July 2013. Other more mediatic conflicts, either by real or perceived factors, as the struggle between self-defense and LCT in Michoacan, or the role of

38. SÁINZ, L.C., *Rejas rotas. Fugas, traición e impunidad en el sistema penitenciario mexicano*, México DF: Grijalbo, 2013, pp. 25-43, mainly p. 33.
39. US CONSULATE MATAMOROS, *Zetas massacre 72 migrants in Tamaulipas*, Cable, Unclassified, August 26, 2010, pp. 2-3. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB445/docs/20100826.pdf>.
40. US CONSULATE MATAMOROS, *Holy Week Vacations Murred by Violence; San Fernando Body Count Reaches 196*, Cable, Sensitive, April 29, 2011b, pp. 1-4. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB445/docs/20110429.pdf>.
41. OSORNO, D.E., “How a Mexican Cartel Demolished a Town, Incinerated a Hundred of Victims, and Got Away with It”, *Vice News*, December 31, 2014. Retrieved from <https://news.vice.com/article/how-a-mexican-cartel-demolished-a-town-incinerated-hundreds-of-victims-and-got-away-with-it>.
42. VILLEGRAS, R., “El crimen organizado y la reestructuración”, *Reporte Índigo*, April 23, 2013. Retrieved from <http://www.reporteindigo.com/reporte/mexico/el-crimen-organizado-y-la-reestructuracion>

“Guerreros Unidos” in the Ayotzinapa’s crisis in the state of Guerrero, have caused LZ just vanished from the security narrative, except for the arrest of “Z-40” in 2013. However, as it was demonstrated for LFM in places like Michoacan, the *disappearance* of a DTO from the official discourse does not mean that the structure and contacts built by it, summarized in the concept of “criminal networks”, fade away⁴³. It is expected that the same has happened to LZ.

Since 2005, there is information that describes LZ as a decentralized organization, being that one of the impediments to launch unified attacks⁴⁴. LZ have been labelled as a DTO with hierarchical structure⁴⁵, but the fact is that LZ as unitary and structured organization is only an ideal model. Closer to the nature of DTO is the assumption that LZ probably combine a central core, with *zetas* or associated individuals-which come and go, without a permanent relationship with the organization-, and *wannabes*, like copycats which imitate LZ *modus operandi*⁴⁶. The result is the autonomy of many of its cells, with an increasing pressure for the action of the Mexican state, that opens the chance for increasing betrayals and breaking weaken alliances. This could explain also the possibility that some groups of LZ turn into family clans, like many others DTO⁴⁷. Another option for this organization is the emergence of regional commands specialized in violent crimes, that use the know-how of LZ, and able to profit the *zeta* famous brand to consolidate their position. And, from that basis, to accumulate resources to get a greater centralization, as terrorist groups have grown as well from a strong regional presence. Or, another possibility, is that they mimic in the Mexican criminal organizations panorama, just being a DTO among others.

43. PÉREZ, J., “The New Criminal Players in Mexico’s Embattled Michoacan State”, *InSight Crime*, March 16, 2015a. Retrieved from, <http://www.insightcrime.org/news-analysis/new-criminal-players-in-mexico-embattled-michoacan-state>.
44. “Los Zetas’ lack of a strong leader probably impedes the immediate planning and execution of any such designs [attacks against GC]”, US FEDERAL BUREAU OF INVESTIGATION, 2005b, op. cit., p. 1.
45. As does MONTOYA, op. cit., pp. 154-155.
46. US FEDERAL BUREAU OF INVESTIGATION, 2005b, op. cit., p. 3. Referring to LZ, “few clearlines distinguishing between full-fledged members, associates, and imitators exist”. Idem.
47. OSORNO, D.E., “Entrevista con un zeta”, *Gatopardo*, October 2013, p. 3. Retrieved from <http://www.gatopardo.com/ReportajesGP.php?R=212, p. 3>.

Probably the final result for LZ will be a combination of those options.

4. Are LZ insurgents or paramilitaries?

The theoretical framework and the characterization of LZ offer some conclusions about the nature of this organization and its relationship with insurgency and paramilitary. I have agglutinated them into three features: Ambiguous relationship with the Mexican state; the issue of the integration into a political project; and the problematic term of *criminal insurgency*.

4.1. Ambiguity of the link with the Mexican state

LZ relationship with the Mexican state is ambiguous. That is, it can not be argued that they oppose completely the state, as do insurgencies. In fact, they just face it to the extent that any criminal does, in the specific fields where their activity collides with law enforcement. Therefore, naming LZ insurgents just because they do not want the laws applied to them would be like arguing that every offender belongs to a kind of *brotherhood of insurgents* seeking to undermine the Law. In other words, it would be forcing the unity of disconnected events. Moreover, in events where it can be seen a qualitative difference in LZ *modus operandi*, state presence is tracked, what take LZ away from the insurgency. In fact, a comparison with Colombian situation can be helpful. There, the AUC provided a macrostructure where individuals (not only paramilitaries, but drug traffickers, politicians or businessmen) could insert their actions, creating a context that eventually could oppose to the state. In Mexico, the issue is more subtle: There, the actions or omissions of the state amplify the damage of non-state actors like LZ, which collaborate with some parts of the institutional machinery. But it is not a unified policy. For example, in a city in Tamaulipas, LZ can have a strong presence (e.g., Nuevo Laredo); in other one, they have to collaborate with other groups; and beyond Tamaulipas, LZ can decide to confront the hegemonic DTO, with the help of local police. Or establishing an alliance with local groups. And in other part of the Mexican Federation, it

can be the other way round, and having the local police against them. The puzzle of violence in Mexico has changing parts and no fixed rules. In this complexity, the clarity of an armed conflict in Mexico is just not working. Or it is only working to disconnected municipalities. But can it be said that a war is happening in so limited places?

In the latter cases analyzed, the mass killings of migrants or individuals perceived as linked to GC, it is detected the state presence, as local police acted as "halcones" or informal watchers, trapping LZ enemies and omitting to prosecute LZ crimes⁴⁸. According to the five levels of police collusion⁴⁹, police in San Fernando municipality may be at levels 4 or 5, i.e., being paid by LZ or practically integrated in this criminal organization. Actually, protection may be statewide, as might be inferred from evidence that points precisely Tamaulipas' governors⁵⁰. While evidences suggest a protection at the highest level for the GC, it can not be rejected that the same channels of corruption are exploited by LZ. The correlation between this organization (and the most relevant DTO in Mexico) and public authorities can be seen in the other examples cited. What some sources say as "a com-

48. PROCURADURÍA GENERAL DE LA REPÚBLICA, SUBPROCURADURÍA ESPECIALIZADA EN INVESTIGACIÓN DE DELINCUENCIA ORGANIZADA, *Tarjeta Informativa, Asunto: Policias relacionados con el hallazgo de Cadáveres en las Fosas clandestinas en San Fernando, Tamaulipas*. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB499/TarjetaInformativa.pdf>.

49. "Level 1: The police simply allow criminal groups to act without interfering. Level 2: The police accept (or demand) payment for allowing criminal groups to act without interfering. Level 3: The police protect criminal groups and their enterprises for a fee. Level 4: The police work for the criminal groups and their enterprises for a fee. Level 5: The criminal group runs the police as part of the criminal enterprise". CAWLEY, M. and DUDLEY, S., "German Guns in Mexico and the 5 Levels of Police Collusion", *InSight Crime*, December 12, 2014. Retrieved from <http://www.insightcrime.org/news-analysis/german-guns-mexico-5-levels-police-collusion>

50. US EMBASSY MEXICO CITY, *Mexican Political Highlights January 28-February 3, 2012*, Cable, Unclassified, February 3, 2012. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB499/DOCUMENT40-20120203.PDF>; and US ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF TEXAS, DEPARTMENT OF JUSTICE, *Former Governor of State of Tamaulipas, Mexico, Indicted in the Southern District of Texas*, December 2, 2013. Retrieved from http://www.justice.gov/usao/tex/1News/Releases/2013%20December/131202%20-%20Yarrington%20and%20Martinez_print.html. For a deeper study, FLORES PÉREZ, C.A., *Historias de polvo y sangre: Génesis y evolución del tráfico de drogas en el estado de Tamaulipas*, México: Centro de Investigaciones y Estudios Superiores en Antropología Social, 2013, pp. 285-338.

bination of understaffing, inability, and corruption⁵¹ on immigration controls is perfectly feasible for other areas. For instance, negligence, lack of control and deliberate omissions are also the diagnosis of the role of public authorities in events such Allende⁵².

Again, this confirms studies by authors such as SALCEDO-ALBARÁN and GARAY, who have seen that the relationship between DTO and public servants is the main aspect of criminal networks. Public officials would be “gray agents”: They belong to a legal institution, but they are engaged in illegal work⁵³. But, somehow, they accept the legal rules: In San Fernando, but similar situations are countless, municipal police are disarmed and arrested by federal forces, without any confrontation⁵⁴. Can we imagine the same situation if they were part of an insurgency? If my position should be radicalized, I would say that violence in Mexico has more to do with *state institutions versus state institutions*, than an insurgency versus the state. This contrasts with other insurgencies, who oppose the state because they are themselves autonomous, as a part in an armed conflict (AUC, Sendero Luminoso), or for growing from tribal support (Islamic State).

4.2. The issue of the integration into a political project

From the features of paramilitary and insurgency, it follows that the groups named as such are characterized by a series of relationships with political and social entities. That strategic variant of any insurgency or paramilitary can be called “integration into a political project”. In paramilitarism, is represented by the strong links with a state, which can adopt different forms, but a common goal. Regarding the insurgency, there are features like the ability to be sponsored by foreign powers, or the synergies between the insurgency (namely,

51. US EMBASSY IN MEXICO, *A Perilous Road through Mexico for Migrants*, Cable, Sensitive, January 31, 2011, p. 2. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB499/DOCUMENT28-20110131.pdf>.

52. OSORNO, 2014, op. cit.

53. SALCEDO-ALBARÁN and GARAY, 2014, op. cit., pp. 12 and 35.

54. US CONSULATE MATAMOROS, *Mexican Army Seizes Weapons of Local Police in Tamaulipas*, Cable, Unclassified, May 13, 2011c. Retrieved from <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB499/DOCUMENT35-20110513.pdf>.

militar front) and the sociopolitical one (i.e. the “movement”, as the Leninist “mass front”).

These considerations overcome positions that merely indicate the political aspect of a criminal group using both terms like “policy element”, which can be confused with the related to the crime of crimes against humanity; and “ideological element”⁵⁵, which leads to a tautology: Any organization, as every individual, has an ideology, so this aspect can not be defining. The difficulty of LZ to gravitate around a bigger, sociopolitical structure is because both their speech and acts are subordinated to profit, and even they are contradictory, due to the lack of structures to ensure a coherent performance. Neither firsthand witnesses⁵⁶ indicate a hierarchy or a command that applies to all members of LZ. If there is no unity in LZ, how could they be instrumented by powers like the state? Or how could LZ promote a social and political movement close to an insurgency?

4.3. The problem of criminal insurgency

Despite the above objections, the doctrine has raised the concept of “criminal insurgency”⁵⁷ to explain the context of Mexican violence related to DTO. Briefly, that concept obviates military and social mobilization of political insurgencies, and replaces it with the abs-

55. MONTOYA, op. cit., p. 142.

56. On the contrary, they describe a combination of terror propaganda, revenge and do-what-you-can actions: “I say that it is like a chain [a zeta talks]: The Gulf cartel grabbed three of us and beheaded them, then we grabbed three of the other [enemies] and we do the same thing or worse: I put them inside a box... It's like a chain: you hurt me and I'll do more damage” (“Yo digo que ya es como una cadena: El cártel del Golfo agarró a tres de los nuestros y les mochó la cabeza, entonces agarramos a tres de los otros y les hacemos lo mismo o se les hace lo peor: los encostalo y los dejo en una caja... Ya es como una cadena que se agarró: tú me haces daño y yo te voy a hacer más daño todavía”). OSORNO, 2013, op. cit.

57. Developed and spread by SULLIVAN, J.P. “From Drug Wars to Criminal Insurgency. Mexican Cartels, Criminal Enclaves and Criminal Insurgency in Mexico and Central America, and Their Implications for Global Security”, VORTEX Working Papers N°6, Bogotá, 2012, pp. 8-9 and 16-18. Retrieved from <http://www.scivortex.org/6FromDrugWarsCriminalInsurgency.pdf>. MONTOYA agrees with those postulates and she completes them with a deep legal analysis (although I consider her premises are wrong), in: MONTOYA, op. cit., pp. 145-171. The term has been popularized by GRILLO, I, *El Narco. En el corazón de la insurgencia criminal mexicana*, México DF: Ediciones Urano, 2012, pp. 321 and foll.

tract goal of self-protection to their criminal structures against the state policies. That strategy would indicate a common goal of DTO, transformed in criminal insurgencies, in order to obtain something like *the end of law enforcement*. That term is connected to others which also explain the insurgency's violence as an option itself, and with no other goal than maintaining its structures. For instance, insurgencies characterized by a "political autonomy" for "creating or maintaining a situation which is beyond the state political control"⁵⁸. However, examples where an insurgency has abandoned its goals of takeover or building alternative institutions, to become a sort of *an insurgency by the insurgency itself*, derive usually from situations in which armed groups turn their original political objectives. Or in situations where the state has collapsed, e.g.: Somalia. Namely, it is difficult, if not impossible, to find historical examples where there is a protoinsurgency without a political objective, and a postinsurgency without having been an insurgency.

But, as I have pointed out, LZ just confront the authorities partially, similarly to any other criminal group but with amplified impact, given the Mexican context of impunity. According to this, GARZÓN VERGARA remarks that the strength of a criminal organizations should be not defined "from the actions taken to respond to the state offensive or confront other illegal factions", because there are "connections between legal and illegal, formal and informal, in the context of institutional weakness and deterioration of the culture of legality"⁵⁹. If Mexico's federal institutions have the political will to act and removing the political and administrative obstacles that permit the fluid relationships between legal and illegal actors, they can recover the initiative against LZ, although this organization causes the deadliest attacks or even they (or other DTO) have control over certain municipalities⁶⁰. At no time the Mexican government is

58. JORDÁN, op. cit., pp. 120-122, following METZ, op. cit., pp. 54-55.

59. GARZÓN, J. C. *La rebelión de la redes criminales: El crimen organizado en América Latina y las fuerzas que lo modifican*, Woodrow Wilson Center Update on the Americas, 2012, p. 8. Retrieved from http://www.wilsoncenter.org/sites/default/files/Garzon.Rebellion.ESP_.pdf.

60. What does to have the control of a *plaza* mean? According to US FEDERAL BUREAU OF INVESTIGATIONS, 2005b, op. cit., p. 4, footnote 3, "[p]laza" refers to an area controlled by a drug-trafficking organization. That control involves of corruption of public

overwhelmed qualitatively, although they may be unable to prevent violent acts.

5. Conclusions

Mexican organized crime has added new features to the characteristics of DTO. Examples like joint operations between security forces and drug traffickers, DTO stronger than local polices and able to corrupt other public institutions, in a context of impunity, have resulted in a high criminal innovation. Although other DTO have used heavy weapons, intelligence and "halcones" before, LZ industrialized it and offered a particular model of protection, i.e., a response to the fragmented market of public protection, and the possibility that private bodies undertake such tasks⁶¹. LZ established a replicable model that has served to other non-state actors as a basis for innovate in the Mexican violence market. Other DTO have been forced to create their own groups, or even to outline their speeches in terms of counterinsurgency, as CJNG⁶².

That LZ ability to generate violence is obvious, and it represents contemporary challenges in dealing with non-state organizations violence (e.g., spectacularity of some manifestations of violence, even sadism and dramatization, or hybridization of criminal and political goals). Some international terrorist organizations has become massive, and so have some DTO.

According to that, some contradictions of considering LZ an insurgency or a paramilitary organizations can be highlighted:

officials and the protection of trafficking corridors from other criminals". But sometimes it can be a wider control, like using checkpoints or having both the major and the local police working for the DTO. And in other occasions, it can be just a selective protection from law enforcement. Again, there is not an only scenario in Mexican violence.

61. RESA, C., "Michoacán en positivo", *Excelsior*, January 22, 2014. Retrieved from <http://www.excelsior.com.mx/opinion/opinion-del-experto-nacional/2014/01/22/939641>.

62. PÉREZ, J., "How the Jalisco Cartel Evolved with Mexico's Drug War", *InSight Crime*, October 15, 2014b. Retrieved from <http://www.insightcrime.org/news-analysis/jalisco-cartel-evolved-mexico-war-drugs>.

1. Considering LZ an insurgent organization, and even remarking that there is a non-international armed conflict in Mexico, and therefore it would be necessary to implement IHL to make the parties respect certain fundamental rights, stumbles upon the fact that individuals linked to DTO are not challenging the system for political reasons, but for opportunist ones. If they do not have any incentive to respect the normal law, it is probably that IHL has no effect on its acts.
2. Labelling as lawful combatants LZ's members creates another problem: Any murder of police, military or *zeta soldier* (or even the assassination of a President of Mexico, as Commander in Chief of the armed forces) go unpunished from the ICL perspective, if they are linked to the so called *war* as legitimate objectives, unless the attack is cataloged as a crime against humanity⁶³. Obviously, a Manichean scheme as such forgets the most complex gray areas, where legality and illegality converges.
3. Analogies *in malam partem*, prohibited in ICL, have a correlation in the lax use of analytical concepts. And the perspective on DTO is unfocused, if it is argued that LZ “[a] t least control 70% of the territory of the state of Tamaulipas and parts of Sinaloa”⁶⁴. It is not the same resilience or impunity, than an active political goal to control a territory. In fact, labelling LZ as either an insurgent or a paramilitary group does not permit to differentiate them from other situations, such as the rise of Michoacan self-defense forces.

To conclude, state's tolerance, cooptation, partial inability, or negligence are the keys to understand Mexican violence and the role of DTO like LZ, and not the ability of DTO as acting *in vacuo*. In México there are DTO not enough autonomous from the state to be called insurgencies, but too independent from the state (by a combination of their own strength *and* links with public servants, security forces or *de facto* powers) to be named paramilitary. Thinking about that paradox is a better path than maintaining rigid theoretical approaches.

63. On the technical questions of using the legal term of crimes against humanity to persons linked to non-state actors, PÉREZ, 2015b, op. cit., pp. 79-88.
64. MONTOYA, op. cit., p. 156.

Chapter 7

The State And Contemporary of Institution B

Summary: 1. *Introduction*
2. *Organized Crime in Mexico*. 3. *From Organized Crime to State Organized Crime*. 4. *When the State Organizes Crime*. 5. *Peña Nieto's "Solution" to Organized Crime*. 6. *Conclusions*. 7. *References*

1. Introduction

This paper explores the role of the state in facilitating the rise, spread and perpetuation of organized crime and the explosion of drug-related violence in Mexico in the 21st Century. It draws on the analysis of the Mexican governing elites' direct involvement in organized criminal operations.

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